

NO. 53165-8-II

COURT OF APPEALS, DIVISION
OF THE STATE OF WASHINGTON

FILED
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DIVISION II
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STATE OF WASHINGTON
CLERK

THE STATE OF WASHINGTON,
Respondent

v.

CESAR CHICAS-CARBALLO,
Appellant

ON APPEAL FROM THE SUPERIOR
COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY
NO. 17-1-00874-7

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW RAP1010

P/M: 12/20/19

I. AUTHORITY

Pursuant rules of Appellate procedure Rule 10.10 Appellant Cesar Carballo wishes to submit this statement of additional grounds for this Court to review

II. GROUNDS

When Mrs Flores was cross-examine by Defense Attorney Mr Hershman she admitted to providing false testimony (Shaun Linse CCR 1824 at 6-10)

Mrs Flores also admitted to constantly saying things that where not true (Shaun Linse CCR 1825 at 9-20)

Mrs Flores also testified under Oath that she did not have to say the truth ever. (Shaun Linse CCR 1831 at 20-23)

Mrs Flores is constantly changing her testimony (Shaun Linse CCR 1852 at 1-10)

Mrs Flores gave seven reasons
1, she was trying to help Jose get out of Jail etc. (Shaun Linse CCR 2236 at 2-25, 2237 at 1-9)

III. ARGUMENT

A person may be impeached if his or her credibility is a fact of consequence to the

action. State V. Swagerty,
98 Wn. App. 452, 989 P.2d
1222 (1999)

IV. CONCLUSION

Appellate Carballo should
be granted a new trial and/
or,

Appellate Carballo's conviction
should be reversed.

Cesar Carballo

12/12/2019

CESAR CHICAS-CARBALLO

1830 eagle crest way

Clallam Bay, WA

98326

C E R T I F I C A T E

STATE OF WASHINGTON)

)

COUNTY OF PIERCE)

I, Shaun Linse, Official Shorthand Reporter in and for the County of Pierce, State of Washington, do hereby certify that the foregoing proceedings were reported to me on October 22, 2018 and reduced to typewritten form.

I further certify that the foregoing transcript of the proceedings is a full, true, and correct transcript of my machine shorthand notes of the aforementioned matter dated this 6th day of July 2019.

Shaun Linse, CCR
CCR# 2029

1 A. Yes.

2 Q. Then I directed your attention to page 20 of 159.
3 If you could go ahead about four pages. Do you recall
4 reading that just moments ago?

5 A. Yes.

6 Q. And out in the hall, you told me -- correct me if
7 I'm wrong -- that up to that point in the transcript some of
8 what you said was true and some of what you said was false;
9 isn't that right?

10 A. Yes.

11 Q. But after that point in the transcript, everything
12 you said was true; is that right?

13 A. Yes.

14 Q. I don't want to put words in your mouth. You
15 correct me if I'm putting words in your mouth, okay?

16 A. Yes.

17 Q. I want to ask you about some of those issues, if I
18 could, please. Some of the things you said both before and
19 after. Now, do you remember giving that statement?

20 A. Yes.

21 Q. All right. And do you remember when people were
22 asking you questions, when Detective Lopez Sanchez was asking
23 you questions, you frequently used the word honestly. You
24 would say, "No, honestly," then you would go on and give your
25 answer. Do you recall using that word?

1 A. No, I don't remember.

2 Q. You don't? I'm going to direct your attention to a
3 couple of portions in that paragraph. And ~~let me~~ start out
4 by asking a more fundamental question. Ma'am, sometimes do
5 you say things that are not true?

6 MR. GREER: Your Honor, I guess I'll object.

7 THE COURT: Sustained to the form of that
8 question.

9 Q. (By Mr. Hershman) During the course of this
10 interview, and frankly, even during the course of your
11 testimony last week, did you say some things that were not
12 true?

13 MR. GREER: Judge, I'm going to object to compound
14 as well. It's too separate concepts.

15 A. No.

16 THE COURT: Can you break it down?

17 Q. (By Mr. Hershman) During the conversation with the
18 police, the transcription in front of you right now, did you
19 say some things that were not true?

20 A. I think some.

21 Q. Okay. During testimony last week, did you say some
22 things that were not true?

23 A. No.

24 Q. Everything you said last week was true; is that
25 right?

1 A. Yes.

2 Q. I showed that to you in the hallway right outside
3 here before you took the stand, didn't I? That very line?

4 A. Yes.

5 Q. Then moving ahead to page 20, so jump ahead if you
6 would about four pages. Go to line 128, where in response to
7 several questions you finally acknowledged, "I was at the
8 house." Those were your words, right?

9 A. Yes.

10 Q. And I pointed that out to you in the hallway as
11 well, didn't I, that line?

12 A. Yes.

13 Q. And you told me out in the hall, and you said here
14 on the witness stand, that after that point I was truthful
15 with the police. Do you recall testifying to that here
16 today?

17 A. Yes.

18 Q. Before that line, sometimes you were truthful and
19 sometimes you weren't truthful. That was your testimony as
20 well, right?

21 A. Yes.

22 Q. But now jumping ahead to page 36 of 159, line 289
23 when you say, "I don't know what he may have done, honestly,"
24 that's not true, is it?

25 A. No.

1 Q. Okay. So do you choose to change your answer that
2 I asked earlier today, "Is everything that you said after
3 page 16 truthful?" It's not, is it?

4 THE INTERPRETER: Your Honor, I need that repeated
5 and slower.

6 MR. HERSHMAN: I'm sorry. Thank you.

7 Q. (By Mr. Hershman) Would you like to change your
8 testimony from earlier today that after page 16 of 159, not
9 everything that you told law enforcement was true?

10 A. Yes. It's difficult to remember everything.

11 Q. Thank you. Turn ahead if you would please to page
12 81.

13 MR. GREER: Which page, I'm sorry?

14 MR. HERSHMAN: Page 81 of 159, Counsel.

15 Q. (By Mr. Hershman) Would you please review page 81
16 for me. Take your time.

17 A. (Witness complying.)

18 Q. Have you reviewed page 81?

19 A. Yes.

20 Q. Now, would you please move over to page 82. Now,
21 this is a particularly significant portion of the transcript,
22 and I want to ask you a couple of questions about it. Go to
23 line 777, if you would please, on page 82. Are you with me?

24 A. Yes.

25 Q. Now, would you agree -- and don't let me put words

1 of innocence.

2 We can't look at that in a vacuum without looking
3 at the issue of credibility. And especially in this case.
4 It's hard to convict somebody beyond a reasonable doubt
5 sufficient to overcome a presumption of innocence when your
6 own witness gives you reason to doubt. Ergo, Ms. Flores.
7 The state can't undermine the credibility of its own witness
8 without destroying its own case. I want you to remember
9 what I elicited from Ms. Flores while she was on the stand.
10 "Ms. Flores, why is it that you might say things that are
11 untrue, in particular in this case?" She gave us seven
12 reasons. Let me go through them now.

13 She lives with Jose's family. Jose mom told her
14 to get him out, meaning out of jail. Parenthetically, let's
15 think about mom for a moment. Mr. Greer brought out on
16 direct examination. Mom is the one who created a false
17 letter written in first person as if Jose wrote it to
18 supposedly create the facade that he was somewhere else
19 other than this scene on the night in question. That's her
20 character. That's who she's working in cahoots with,
21 Ms. Flores. That's the second one. Third, Jose is in jail
22 and it's Flores' fault. Fourth, Flores has no family here
23 and if she told the truth, Flores would get kicked out on
24 the street. Five, Jose's other friends could kill her or
25 her family. Six, she's afraid.

1 Now, I want to digress for a moment, or maybe
2 regress, you can decide. I want to remember where the word
3 afraid came from. She didn't say that in her conversations
4 with Detective Quilio and Officer Lopez Sanchez. They told
5 it to her. They kept telling her Jose was scared, that she
6 was scared. She then adopted that sometime after page 234.
7 But be that as it may, that was her sixth reason. And her
8 seventh reason, she's just nervous. She's just nervous. So
9 she lies for a lot of reasons, we know that.

10 Now, the state would suggestion to you, uh-huh,
11 see, that's why she's telling different stories. The
12 defense would say, well, that's one inference. Here's
13 another inference. I think that hurts more than it helps,
14 doesn't it. If all of those above theories are, in fact,
15 impacting her ability to be honest, doesn't that create a
16 little bit of a problem? Are we to simply say, all right,
17 here's all the various things in this box that you just said
18 about this case.

19 I'm going to go through her respective statements
20 categorically in just a moment and show you she's been all
21 over the board in each statement. But here's what I want
22 you to do, ladies and gentlemen. I want to cherry pick here
23 and then one from over here, then one from down here, and
24 then maybe even one from outside of the box. Just think
25 about those, because those are the ones who will convict

1 persuade the police with the fact that you were saying
2 something that was false? Were you trying to make the police
3 think that something that was false was true? Was that your
4 intent?

5 MR. GREER: Your Honor.

6 THE COURT: That is a compound and complex
7 question.

8 MR. HERSHMAN: Let me rephrase. That was poorly
9 worded.

10 Q. (By Mr. Hershman) When you were telling the police
11 things and using the word "honestly," but when your statement
12 was false, were you trying to persuade the police that what
13 you were saying was actually true?

14 A. I don't know.

15 THE INTERPRETER: The interpreter would like to
16 ask Your Honor, can you please ask the witness to repeat her
17 answer?

18 THE COURT: Can you please repeat your last
19 answer? And speak up so that we can hear you.

20 A. I just did not have to say the truth, ever.

21 Q. (By Mr. Hershman) Let's explore that for a moment.
22 You did not have to say the truth ever?

23 A. Yes.

24 Q. What do you mean by that?

25 A. Like this, at this moment, I'm telling the truth